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| 10/583,565 | 04/05/2007 | Hermann Korte | HO-P03260USO | 8977 |
| 26271 7590 01/16/2009 FULBRIGHT & JAWORSKI, LLP 1301 MCKINNEY SUITE 5100 HOUSTON, TX 77010-3095 | | | | |
| EXAMINER | | | | |
| PARSLEY, DAVID J | | | | |
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/583,565

Applicant(s)

KORTE ET AL.

Examiner

DAVID J. PARSLEY

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 June 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 June 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-850)
Paper No(s)/Mail Date 2-4-08

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Detailed Action

Preliminary Amendment

1. Entry of applicant's preliminary amendment dated 6-19-06 into the application file is acknowledged.

Priority

2. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 3, 10-11, 14 and 19-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 3 recites the limitation "each case" in line 4. There is insufficient antecedent basis for this limitation in the claim.

Claim 10 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The phrase "especially a ceramic material" renders the claim indefinite in that it implies that other materials other than ceramics can be used but the claim does not specifically disclose other possible materials that can be used.

Claim 11 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The phrase "in particular" as seen in line 4 renders the claim indefinite in that it implies that other orientations of the apertures can be used.

Claim 14 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The term "especially" in line 4 renders the claim indefinite in that it implies that other connection means can be used.

Claim 19 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The phrase "in particular" in line 3 renders the claim indefinite in that it implies that other types of materials other than ceramic can be used without specifically indicating these other types of materials.

Claim 20 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The term "especially" in line 23 renders the claim indefinite in that it implies that

the water from one storage platform flows into a different storage platform other than the claimed storage platforms.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-15 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No.

2,266,043 top Hutchins.

Referring to claims 1 and 16, Hutchins discloses a storage platform, for storing, the storage platform comprising, an adjustable overflow for insertion into a tub-like container comprising, 1, having a base - at 6, with a discharge aperture - see figures 1-5, and a cylindrical tube portion - at 5, with an axial passageway communicating with the discharge aperture - see figures 1-5, wherein a tubular adjusting member – at 2, is rotatably mounted on or in the tube portion – see figures –5, the tube portion being provided with a first adjustment opening – at 7, and the adjusting member being provided with a second adjustment opening – at 3, the adjustment openings being arranged such that in a first turning position of the adjusting member relative to the tube portion the first and second adjustment openings overlap at least partially and define a first overflow level - see figures 1-5, and in a second turning position of the adjusting members, the first and the second adjustment openings do not overlap and close the overflow - see figures 1-5, the overflow for defining a desired level of liquid - see figures 1-5.

Referring to claim 2, Hutchins further discloses the tube portion and the adjusting member are open at an end facing away from the base thereby defining a maximum overflow level – see figures 1-5.

Referring to claim 3, Hutchins further discloses the adjustment openings are substantially rectangular – see figures 1-5, a lower edge in each case facing the base and defining an overflow level - see figures 1-5.

Referring to claim 4, Hutchins further discloses the tube portion has a first adjustment opening running in the axial direction, and extending from the base to an end of the tube portion distal from the base - see figures 1-5.

Referring to claim 5, Hutchins further discloses the adjusting member has two, three or more adjustment openings – at 3,4 and the top of 2, arranged so as to be staggered in a circumferential and an axial direction together with the first adjustment opening of the tube portion defining a corresponding number of overflow levels - see figures 1-5.

Referring to claim 6, Hutchins further discloses stop means – at 8, 5', provided for locking different relative turning positions between the adjusting member and the base – see figures 1-5.

Referring to claim 7, Hutchins further discloses the base has a flat bearing surface adjacent to the tube portion and running radially - see figures 1-5.

Referring to claim 8, Hutchins further discloses the base has two stops to limit a turning angle – see figures 1-5.

Referring to claim 9, Hutchins further discloses the discharge aperture is aligned transversely to the cylindrical tube - see figures 1-5.

Referring to claim 10, Hutchins further discloses the overflow consists entirely or partially of a material – see figures 1-5, that can become water-permeable after it has been wet for a certain time – see page 1 column 1 lines 50-55 and page 1 column 2 lines 1-12.

Referring to claim 11, Hutchins further discloses a further discharge aperture - at 4 or the top of 2, which is arranged so as to be staggered in the circumferential direction and in particular is disposed opposite the discharge aperture - see figures 1-5.

Referring to claim 12, Hutchins further discloses an inspection opening is disposed in the region of the base in an extension of the passageway and communicating therewith – see figures 1-5.

Referring to claim 13, Hutchins further discloses the inspection opening is sealed with a removable cap - see at 11,12 in figure 2.

Referring to claim 14, Hutchins further discloses the base is provided in the region of the passageway with a means for connecting a drainage hose - see at 11,12 in figure 2.

Referring to claim 15, Hutchins further discloses at least one adjustment opening and/or the open end of the adjusting member is/are designed in the form of a grating - see at 12 in figure 2.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hutchins as applied to claim 16 above, and further in view of DE Patent No. 20213719.

Referring to claim 17, Hutchins does not disclose the storage platform is rectangular and has two mounting members in each case on two parallel narrow sides for hanging them in rack struts each mounting member having an engagement end portion ending freely. The German patent does disclose the storage platform is rectangular and has two mounting members in each case on two parallel narrow sides for hanging them in rack struts each mounting member having an engagement end portion ending freely – see figures 1-14. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Hutchins and add the storage rack with mounting member and struts of the German patent, so as to allow for multiple plants to be supported and watered on the device.

Referring to claim 18, Hutchins as modified by the German patent further discloses the engagement end portions of the mounting members are in each case disposed in a corner region of the storage platform – see figures 1-14 of the German patent. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Hutchins and add the storage rack with mounting member and struts of the German patent, so as to allow for multiple plants to be supported and watered on the device.

Referring to claim 19, Hutchins as modified by the German patent further discloses an outlet member is disposed on the storage platform - see figures 1-5 of Hutchins, which becomes water permeable after it has been wet for a certain time - see page 1 column 1 lines 50-55 and page 1 column 2 lines 1-15 of Hutchins.

Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hutchins in view of the German patent.

Referring to claim 20, Hutchins discloses a watering device, having a storage platform, for storing, the storage platform comprising, an adjustable overflow for insertion into a tub-like container comprising, 1, having a base - at 6, with a discharge aperture - see figures 1-5, and a cylindrical tube portion - at 5, with an axial passageway communicating with the discharge aperture - see figures 1-5, wherein a tubular adjusting member - at 2, is rotatably mounted on or in the tube portion - see figures -5, the tube portion being provided with a first adjustment opening - at 7, and the adjusting member being provided with a second adjustment opening - at 3, the adjustment openings being arranged such that in a first turning position of the adjusting member relative to the tube portion the first and second adjustment openings overlap at least partially and define a first overflow level - see figures 1-5, and in a second turning position of the adjusting members, the first and the second adjustment openings do not overlap and close the overflow - see figures 1-5, the overflow for defining a desired level of liquid - see figures 1-5. Hutchins does not disclose at least two storage platforms arranged in such a way that any liquid draining away via the overflow of each storage platform flows into a storage platform below and adjacent to it. The German patent does disclose at least two storage platforms arranged in such a way that any liquid draining away via the overflow of each storage platform flows into a storage platform below and adjacent to it - see figures 1-14. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Hutchins and add the multiple storage platforms and liquid flowing between the storage platforms of the German patent, so as to allow for multiple plants to be supported and watered on the device.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The following patents are cited to further show the state of the art with respect to watering devices for planters in general:

U.S. Pat. No. 3,772,827 to Ware - shows plant watering device

U.S. Pat. No. 3,841,023 to Carlyon - shows plant watering device

U.S. Pat. No. 4,006,559 to Carlyon - shows plant watering device

U.S. Pat. No. 4,295,296 to Kinghorn - shows plant watering device

U.S. Pat. No. 5,404,672 to Sanderson - shows plant watering device

U.S. Pat. No. 5,438,797 to Lendel - shows plant watering device

U.S. Pat. No. 5,502,922 to Shlomo - shows plant watering device

U.S. Pat. No. 5,598,662 to Droste - shows plant watering device

U.S. Pat. No. 5,826,375 to Black - shows plant watering device

U.S. Pat. No. 6,243,985 to Miller - shows plant watering device

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to DAVID J. PARSLEY whose telephone number is (571)272-6890. The examiner can normally be reached on Monday-Friday from 8am to 4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on (571) 272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/David J Parsley/
Primary Examiner, Art Unit 3643